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DISSENTIENT OPINIONS.

Last week, referring to the suggestion of a contemporary, that dissentient opinions in the Supreme Court should be suppressed, we remarked that such a course seemed to us objectionable as being deceptive in itself, as unfair to dissentient Judges, and calculated to retard the progress of the science of jurisprudence. That it would be a deception admits, we think, of no doubt. What would be the object of suppressing the dissent if not to present the appearance of unanimity? And if the Court be made to appear unanimous when it is not so, somebody must be deceived or misled by the artifice. Now, however good the end in view, we cannot think it should be attained by misrepresentation. The day for such pious frauds is past. But it may be said, there is no deception because the judgment is not represented to be more than the judgment of a majority. If so, that numerous class of judgments in which the Court is actually unanimous loses in force just as much as the non-unanimous judgments gain through the failure to state exactly how the Court stands. The force of important enunciations of principle may be weakened by the whisper or the surmise that the principles laid down by the Court are the views of a bare majority. The Court will often be supposed to be at variance when it is perfectly agreed, and Judges who fail to state their opinions from the bench at the time the judgments are delivered may improperly be counted as dissentients.

This leads us to the second ground of objection above stated—that the suppression of dissent is unfair to the Judges themselves. The minority may be condemned by such a rule to remain silent while a doctrine of which they are convinced that time will demonstrate the unsoundness, is proclaimed from the bench by their colleagues, and no disclaimer will be possible. How often in the past has an erroneous principle obtained judicial sanction for a time until the strong light of criticism and debate has exhibited its weakness and led to its rejection? Surely the minority in such a case would be justified in taking some means to let the world know that they are not to be held responsible for the error. Number does not always constitute strength, and the minority may be men of extraordinary powers, while the majority are quite the reverse. Even where the decision turns on a question of evidence, an injustice may result from the suppression of dissent. For example, the decision of the majority may attach a serious imputation of fraud to an individual. Is not the latter entitled to the benefit of the statement that certain members of the Court did not share in a view which dishonors him? In an election case, the judgment of the majority may disqualify a member of Parliament. Are the minority to refrain from expressing their disbelief of the evidence on which the majority have based so serious a condemnation?

The third ground of objection, that the suppression of dissent would retard the progress of the science of jurisprudence, appears to us to be equally clear. If the dissentient opinions are unsound, it is better, nevertheless, to put them on record. Their unsoundness will become more and more apparent, the longer they are scrutinized and canvassed. On the other hand, if the dissentient opinions are the sounder of the two, their suppression can only have the effect of giving to error the mantle of increased authority. It will be more difficult to correct the error; but *magna est veritas*—in the end the truth will get the upper hand, however obstinately the vicious precedent may fight for existence and respect. We cannot find any words in which to describe this disintegrating process so apt as those employed by a Westminster Reviewer some years ago, in referring to the obstruction to justice caused by a bad decision. "Judges," says this writer, "are not infallible, and though actuated by the purest intentions, they sometimes decide wrongly. Such decisions are, nevertheless, available for citation, like all other precedents. Now, when an erroneous decision in the past comes to be pressed upon a Judge in the present, one of two things must happen—either precedent must be followed, or it must be disregarded. The traditions of the profession point in one direction, while the instinct of justice exercises its influence in the opposite. The result is oftentimes a com-